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In the High Court of Judicature at Madras

Date : 17.4.2007

Coram :

The Hon'ble Mr. Justice P.K. MISRA
and
The Hon'ble Mr. Justice S.K. KRISHNAN

H.C.P. No: 64 of 2007

Hemandrakumar ... Petitioner

-vs-

1.State rep. by
Secretary to Government,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George,
Chennai.9.

2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai .8. ... Respondents

.. .. ..

Writ petition under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the detenue viz., Surendrkumar @ Suresh @ surya, S/o Ricab Chand, who is now detained in Central Prison, chennai in pursuance of the detention order passed by the second respondent herein in Memo No.310/BDFGISSV/2006, dated 4.12.2006 before this Court, call for the records, set aside the order and set the detenu at liberty forthwith

For petitioner : Mr. S. Swamidoss
For respondents : Mr. Babu Muthu Meeran,
Addl. Public Prosecutor.

.. .. ..

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O R D E R

(Order of the Court was made by P.K. Misra, J.)

Heard Mr. K. S. Swamidoss Manokaran, learned counsel appearing for the petitioner and Mr. M. Babu Muthu Meeran, the learned Additional Public Prosecutor appearing for the respondents.

2. The order of detention, on the allegation that the detenu is a Goonda, within the meaning of Act 14 of 1982, is in question. The detenu is aged about 20 years. The Order of detention was passed on 4.12.2006. In the grounds of detention, a reference has been made to several adverse cases and one ground case. It is not in dispute that the detenu has been shown to be arrested in all the adverse cases as well as the ground case. In most of the adverse cases, it is alleged that the detenu had committed an offence under Sections 457 and 380 IPC. In the ground case, the allegation is that the detenu has committed an offence inter-alia under Sections 392 and 397 IPC.

3. In paragraph 4, the detaining authority has indicated that the detenu is in remand in connection with C2 Elephant Gate Police Station Cr. No. 663 of 2006 which is the ground case and has come to the conclusion that there is possibility of the detenu being released on bail by filing a bail application. However, there is no satisfaction recorded anywhere regarding the possibility of the detenu coming out on bail in several adverse cases where the offences appear to be equally serious. It can be noticed that the offence under Section 457 IPC when theft is committed, is punishable with imprisonment upto 14 years. Such punishment is quite comparable with the punishment which can be imposed under Sections 392 and 397 IPC.

4. Without considering the possibility of the detenu being released on bail, in view of the pendency of so many adverse cases wherein it was alleged that the detenu had committed offences of almost similar gravity, the detaining authority seems to have mechanically come to the conclusion that there was possibility of the detenu being released on bail.

5. In several decisions of this Court, it has been held that mere mechanical recital would not be sufficient and the detaining authority should apply his mind to the possibility of the detenu being released on bail on the basis of the materials on record. In the present case, in the absence of any reference to so many adverse cases wherein serious allegation has been made, it can be concluded that the subjective

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satisfaction of the detaining Authority is vitiated and the order of detention is liable to be quashed. Hence, the order of detention dated 4.12.2006 passed by the first respondent stands quashed. This habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith unless his detention is otherwise required in connection with any other case.

6. In view of the above conclusion, it is not necessary to notice the other contentions raised by the counsel appearing for the petitioner to the effect that all the cases have been mechanically registered in the F.I.Rs. and similarly it is also not necessary to consider the question of delay.
Ra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to :

1. The Secretary to Government,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George,
Chennai.9.

2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai .8.

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3. The Public Prosecutor,
High Court,
Chennai.

4. The Superintendent, Central Prison, Chennai
(In duplicater for communication to detenu)

5. The Joint Secretary to Govt
Public (Law and Order) Fort Saint George Chennai 9

sr(co)
nm(17.05.07)

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